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Rachel Dombrowski, Clerk
Appellate Court of Maryland
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Deed. *Id.* Young again, by no fault other than his own ignorance, failed to place land depicted on Plat 2499 outside of Parcel 1 on the Reeder-Wickline Deed "*in rem*" in this instant litigation. *Id.* Rather than address his mistakes, inaccurate survey on Plat 2499, and defective title to Parcel 3, Young chose to misrepresent the facts, deceive the court, and conceal the true state of title. *Id.* Young just showed up at trial and sprung his **inappropriate** relief outside Parcels 2 & 3 on the Appellants, for vexatious reasons.[3] In so doing Young caused Uncle Eddies and Mr. Holder the burden of taking the time and effort to explain Young's bad faith to this court in this appeal.

Thus, with the **inappropriate** relief outside Parcels 2 & 3 removed from the order below, Young can not prove that Mr. Holder ever trespassed, let alone that it is likely to occur in the future. *See, e.g., Scott v. Seek Lane Venture, Inc.*, 91 Md.App. 668, 605 A.2d 942, *cert. denied,* 327 Md. 626, 612 A.2d 257 (1992) (party seeking injunction must show likelihood of future irreparable injury if the injunction is not granted). Mr. Holder appeared at trial and successfully defended the portion of land in the title of his vendors, that undisputedly exists between the eastern edge of Parcel 3 and the western edge of Parcel 1. Mr. Holder's Br. p. 12 Young, having waived the argument to that strip of land is forever barred by *res judicata* from asserting a claim to that land against Mr. Holder, or his privities (Jennifer Butts and/or Stonecrest LLC.)

[3] The record in Appeal No. 1428 September term 2022, and Appeal No. 61 September term 2023 both contain material that would tend to prove Young conspired with Benjamin and Lisa Estes, Christine and Scott Morral, and other unknowns parties in order to conceal the true location of the "planted stone" "found" by George Nagel.

IV. PUBLIC ROADS WERE NEVER AT ISSUE IN THIS LITIGATION

Young asks this court "[w]hether Appellants are able to relitigate their right to cross Mr. Young's Parcel 2 and 3 using nonexistent public roads when this Court foreclosed those claims in its prior Opinion" Young Br. JH p. 11 Uncle Eddies thinks Young should know the answer to his question is that public roads were not litigated at all in the trial court, and this court affirmed that ruling. Uncle Eddies BR. pp. 5-6.

In support of his Appellee Brief, Young relies on an Order dated July 12, 2023, nine (9) days after Mr. Holder noted his appeal, and six (6) days after Uncle Eddies noted its appeal. (Young APP3) The order is outside the scope of appeal, but explains:

> Regarding modification of the injunction, Defendant Holder suggests he is prepared to present evidence that alleged roads have not been closed by the Town of Keedysville and, therefore, the injunction should be modified. **Roads were not considered in this trial** because this court determined the opening or closing of roads is a legislative function. The appellate court found no error in this court's determination. The issue of **whether a road is open or closed, or whether it ever existed at all, remains with the legislative body and is not ripe for this court.**

(emphasis added) (*Id.*) Young spends 17 pages opposing a fantastical delusion that Uncle Eddies is asking this court to litigate public roads. Young Br. UE pp. 7-24

If the issue of public roads "remains with the legislative body and is not ripe for this [trial] court," then it is certainly not ripe for this appeal. Why Young makes the bizarre argument that the record is devoid of evidence of public roads is equally mysterious. *Id. generally*. Of coarse it is devoid, the trial judge expressly precluded all

evidence of public roads. (E1221) Young conceded he was not requesting to enjoin the Appellants from public roads, and the trial court told the Appellants that public roads would be litigated in the *Holder v Morral* case. Uncle Eddies Br. pp. 17-21. Did Appellants rely upon these representations to their detriment? Uncle Eddies doubts it.

Young's attempt to litigate the merits of public roads under the heading "Mr. Holder's and UEBP's Appeal is In Bad Faith," is the epitome of bad faith. Young waived his argument as to public roads by failing to include them in his pleadings, failing to object when the trial court precluded that issue at the pretrial conference, and by conceding at trial he was not asking for an injunction as to public roads. *Id.*

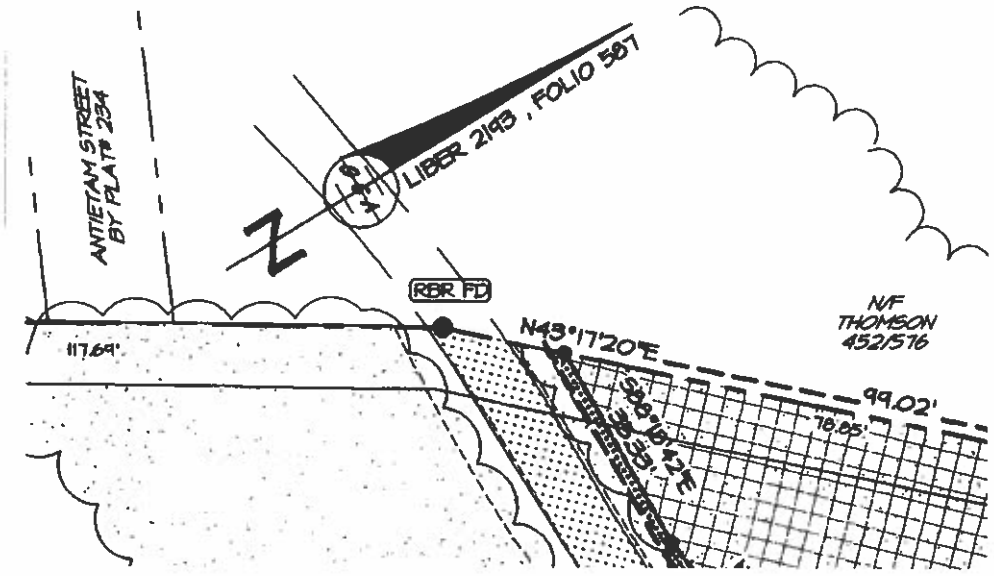
V. YOUNG ARGUES THERE HAS NOT BEEN A "DEDICATION" OR "CONDEMNATION." YOUNG NEGLECTS TO ANALYZE THE OBVIOUS, THE DEEDS THE PARTIE'S PREDECESSOR'S GRANTED TO THE WASHINGTON COUNTY RAILROAD COMPANY IN 1866.

Uncle Eddies disagrees with Young's characterization of the "lay of the land" insomuch "to the north of DNR's property is land owned by Deena Holder and Appellant UEBP." Young Br. JH p. 12 Uncle Eddies would state that to the north of the "abandoned railroad" is land owned by Deena Holder and Appellant Uncle Eddies.[4] Young goes on to make the unsupported assertion that "Presently, Deena Holder and UEBP can access their properties via Antietam Road. Antietam Road cuts through the corner of the Stonecrest Development, crosses the Railroad Property and ends at the

[4] This issue of "ownership of part of a railroad bed, said bed not being at issue in this case," appears to not have been litigated in this case. (E1198)

UEBP and Deena Holder Properties." *Id.* p. 8 Uncle Eddies again disagrees with Young. Public roads were not litigated in this instant suit, nor was any evidence allowed to be tendered to prove or disprove any public roads. (E1221) Thus, as much as Uncle Eddies, Deena Holder and Young may have been able to settle the issue of "easement by necessity" in this litigation had evidence of public roads been allowed, that evidence was not allowed, and therefore the defense of "easement by necessity" could not have been "fully and fairly litigated," and/or "necessary to the judgement."[5]

What is clear from the record is that what Young describes as "Antietam Road" suffers from an alignment issue, that could not be cured under the law of this case:[6]



[5] *See Colandrea v. Wilde Lake*, 361 Md. 371, 761 A.2d 899, 907-10 (2000).

[6] *Generally,* "N/F THOMSON 452/516 is not a successor in interest to "Cost," the predecessor in title to Stonecrest, Uncle Eddies, Deena Holder, Mr. Holder's vendors/ privities, and Young's Parcel 2 & 3. (E881-84) Cost was not the Grantor of the N/F THOMSON 452/516 lands, and therefore N/F THOMSON 452/516 could not be a servient estate of any easement by necessity to a public road. *Id.*

What can be inferred from the predecessor deeds related to the subject property of Cost, is that when Cost granted a right of way to "the Washington County Railroad Company, a Corporation duly incorporated under the laws of Maryland,"[7] that grant specifically required that a "wagon road" was to be "created by the Washington County Railroad Company as required by Section 12 of Chapter [64] of the Acts of Assembly of 186[6]; as aforesaid Act expressly states:

> ways, either public or private, it shall be the duty of the said President and Directors of said company so to construct the said road across such established road or way, as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the lands of any individual it shall also be their duty to provide for such individuals proper wagon, ways across said road or roads, from one part of his lands to the other, and whenever any road or roads may hereafter be authorized to be made by the Legislature, when it may be necessary to cross said railroad, the company shall make or cause to be made a proper and convenient way for road to cross, the expenses of which shall be paid as the Legislature may direct." (E1059-60 at ¶73)[8]

Thus, by Costs' (and Keedy's) signature(s) on the deed(s) the Grantors acknowledged the legislature's right, by and through the quasi public corporation known as the Washington County Railroad Company, to acquire land for the railroad bed, and any "wagon roads" that would be required, and paid for, by the legislature.[9]

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[7] *See* deed(s) recorded at Liber IN18 folio(s) 488 (Cost) & 500 (Keedy) among the land records of Washington County. The only applicable deed to this litigation would be that of Cost, because Young purchased Parcel 2 from the successor of Cost, and adversely possessed Parcel 3 from the successor of Cost. Uncle Eddies Br. pp. 1-10

[8] Chapter 334 of the Acts of 1864 was amended on February 7, 1866.

[9] Since Cost and Keedy were paid consideration this would be more in line with a "dedication" than a "condemnation." *See also* Mr. Holder's Reply Br. § IV.

Young mistakenly argues that "there is no evidence that the wagon road went to a public place." Young Br. UE p. 13 Indeed, Young has conceded the "wagon road" would connect a public place to another public place when he argued the "wagon road" "connects Dogstreet Road to Antietam Drive."[10]

VI. THE RECORD REFLECTS, AND YOUNG KNOWS THAT APPELLANTS, WITH EXPERT TESTIMONY, CAN PRECISELY PLACE THE PUBLIC ROADS ON YOUNG'S CLAIMED PROPERTY.

The trial court ordered the Appellants not to submit any evidence on public roads, and Mr. Holder "instructed expert surveyor George Nagel that the trial court prohibited any evidence of public roads."[11] Moreover, Young did not object to evidence of public roads being excluded, he testified he was not seeking to enjoin the Appellants from the public roads, and the trial court represented public roads would be heard in *Holder v Morral*.[12] Incredibly, Young makes the unfounded challenge that "[a]lthough Appellants suggest that they have identified public roads in the vicinity of the Young Property, they do not identify the location of such roads with sufficient precision to place it on the Young Property." Young Br. UE p. 17 n. 5. Young flat out misrepresents that fact to this court, because "Young was present on March 24, 2021 when George Nagel took accurate measurements of the public roadbed."[13]

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[10] *See* Young's Opposition to Uncle Eddies Petition for Certiorari filed on July 7, 2023, at p. 2 n. 1. (**SCM-PET-0107-2023**)

[11] *See* Affidavit of Justin Holder ¶¶17 & 18) (APP039)

[12] See § IV *supra.*

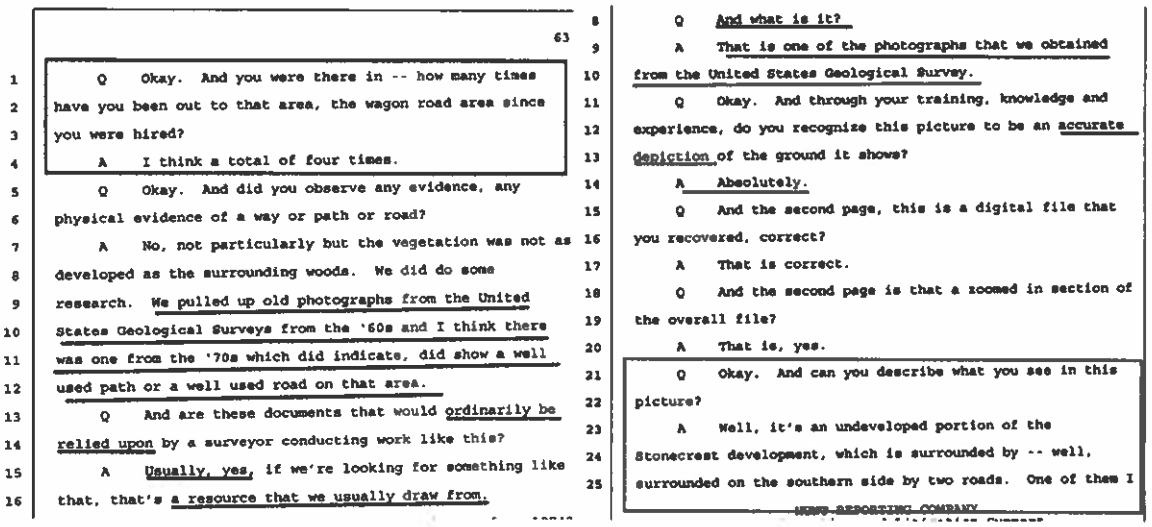
[13] *See* Affidavit of Justin Holder ¶¶14 & 15 (APP038)

Young unfairly argues that "Appellants' failure to hire a surveyor to testify about the location of the Road in the Atlas rendered the claim fatally defective." *Id.* "Compare E1060 (Mr. Holder's amended answer referencing Atlas) with Rule 5-803(b)(18) (requiring expert testimony before admitting treatises or other books concerning subjects of history)." *Id.* Young's challenge to Mr. Holder and Uncle Eddies is highly prejudicial, because Young knows that Mr. Holder and/or Uncle Eddies had no opportunity at trial to enter this evidence, **but indisputable have it.**

The record below contains some of the facts that would have been presented at trial, had the judge allowed Appellants to do so. Mr. Holder explained that "Parcels 2 and 3 are narrow slivers of land as described by Expert Surveyors and further described and depicted in attached Exhibit(s) A through D. **The slivers line up well with the Roads that appear in Ariel photos and maps.**" (emphasis added) (APP002) (Mr. Holder's December 29, 2021 "MOTION to DISMISS or in the ALTERNATIVE COLLATERAL ESTOPPEL of INTERESTED PARTIES," (the "SLAPP Motion")). *See also* Exhibit B which was attached to the Slapp motion. (APP009-27); and Affidavit of George E. Nagel, *generally*. (APP028-35)

Specifically, The Slapp motion Exhibit B explains that prior to a July 31, 2020 peace order proceeding in the matter of *Morral v Holder*, expert land surveyor George Nagel had been in the field at least four (4) times to make precision

measurements that agreed with monumentation in the field, and public records, including Aerial photography, that place the road on Parcel 2 and/or 3. (APP022-23):



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Q Okay. And you were there in -- how many times have you been out to that area, the wagon road area since you were hired?

A I think a total of four times.

Q Okay. And did you observe any evidence, any physical evidence of a way or path or road?

A No, not particularly but the vegetation was not as developed as the surrounding woods. We did do some research. We pulled up old photographs from the United States Geological Surveys from the '60s and I think there was one from the '70s which did indicate, did show a well used path or a well used road on that area.

Q And are these documents that would ordinarily be relied upon by a surveyor conducting work like this?

A Usually, yes, if we're looking for something like that, that's a resource that we usually draw from.

Q And what is it?

A That is one of the photographs that we obtained from the United States Geological Survey.

Q Okay. And through your training, knowledge and experience, do you recognize this picture to be an accurate depiction of the ground it shows?

A Absolutely.

Q And the second page, this is a digital file that you recovered, correct?

A That is correct.

Q And the second page is that a zoomed in section of the overall file?

A That is, yes.

Q Okay. And can you describe what you see in this picture?

A Well, it's an undeveloped portion of the Stonecrest development, which is surrounded by -- well, surrounded on the southern side by two roads. One of them I

Mr. Holder further explains that the Appellant(s) can absolutely provide an expert opinion on the precise location of the public roads in his affidavit. (APP036-39) "On March 24, 2021 professional land surveyor George Nagel, Richard Nagel, Adam Greivell, Esq., Matthew Ruble, Esq., [and Mr. Holder] were present on the property Young claims in accordance with a right of entry to survey the land,"[14] (the "survey party.") *Id.* ¶4 The survey party "walked the land and followed the roadbed that Young was using as his driveway southeasterly, and onto property commonly known as the 'Rockingham subdivision.'" *Id.* ¶5 Mr. Holder "observed George Nagel and his son, Richard Nagel, using instrumentation to measure and locate what the survey party agreed is a roadbed." *Id.* ¶6 "The roadbed the survey party identified continued

[14] *See* Affidavit of Justin Holder ¶4. (APP036) (On March 24, 2021 Adam Greivell, Esq. was counsel for Mr. Holder, and Matthew Ruble, Esq. was counsel for Deena Holder. George Nagel was accepted as an expert in land surveys at trial. (E0858)

southeast towards the intersection of what is now Dogstreet road and Mount Briar road, through an area of the Rockingham subdivision that is identified as an "existing nature trail" at note three (3) on that plat No. 5429 of 'Rockingham subdivision'" *Id.* ¶7 "As the survey party walked along the 'existing nature trail,' Adam Grievell, Esq. pointed to what the survey party agreed was a survey stone (monument) called for along a 'road' as described in the public records and predecessor deeds of N/F Austin Flook." *Id.* ¶8 Mr. Nagel "did not testify at trial related to evidence of public roads." *See* Affidavit of George E. Nagel ¶19. (APP028-35) However, it is undisputed that Mr. Nagel would have testified in his professional capacity at trail that:

a) The local connector roads depicted on "the 1974 Comp Plan Maps burdens the area of land described as Parcel 2 as it is described on Plat No. 2499 as an 'AREA OF DEED OVERLAP,'" *Id.* ¶11 and on "Plat 8292 at or near the location on Plat No. 2499 depicted as running more or less parallel to the text notation 'FENCELINE DOES NOT FOLLOW DEED LINE.'"[15] *Id.* ¶12;

b) "'Harris Lane' follows the same path as [Mr. Nagel] described as 'Approximate location of Access Easement' in a survey…and the area described as 'Vegetation and ground clearing in this area' on a 'Maryland DNR demonstrative Merlin Map.'" *Id.* ¶13, *See also* Mr. Holder's Reply Br. pp. 11-14 & (APP040-60) (Acceptance of Harris Lane by the Town);

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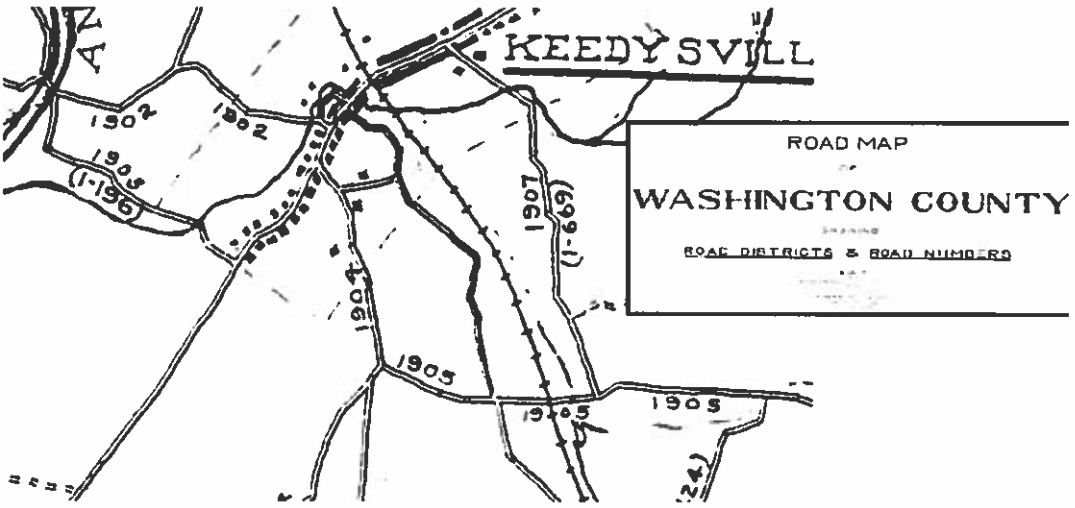
[15] *See also* Young Br. UE p. 11 ("Mr. Young Dedicated a portion of Parcel 2 to Washington County to facilitate Dogstreet Road.")

c) Mr. Nagel surveyed "the land that is burdened by the road being designated as '1906,' (or an extension thereof) on the '1936 Road Map,' and road '1906' (or an extension thereof) accurately follows the path that is demonstratively marked as 'Rd to Hess mill' on page 69 of [Ted] Ellis's book." *Id.* ¶16; and

d) "the location of the road designated as 1906, (or extension thereof) on the 1936 Road Map burdens land described on Plat No. 2499, and that illustration [*infra*] is inserted into [Mr. Nagel's] Affidavit." *Id.* ¶18



On March 24, 2021 Young witnessed the survey party, including Mr. Nagel, meticulously locate public roads precisely over the land he claims. Young's challenge to the Appellants is in bad faith, and highly prejudicial to these Appellants in this court, with limited ability to enter evidence. Uncle Eddies proffers by way of Affidavit(s), some of the admissible evidence and testimony that would have been adduced at trial, if all evidence of public roads had not been excluded.

VII. YOUNG RAISES NEW CLAIMS NOT "*IN REM*," AND YOUNG FAILS TO JOIN NECESSARY PARTIES. YOUNG'S NEW CLAIMS SHOULD BE DISMISSED WITH PREJUDICE.

Young's litigates public roads that he did not place "*in rem*" below. The lack of subject matter jurisdiction can be raised at any time. *See* Md. Rule 2-324(b). *See also Thacker v. Hale*, 146 Md. App. 203, 225 (2002) (When the issuing court exceeded its subject matter jurisdiction, the court must find the prior judgment invalid.) Young's failure to join local government is equally fatal. *See* Md. Rule 2-324(a). *See also Mahan v. Mahan,* 320 Md. 262, 273 (1990).

VIII. CONCLUSION

This Court should vacate the injunction. Or, at a minimum, remand this case again with instructions to expressly limit the injunction in the final paragraph of the revised order to Parcels 2 and 3 subject to public roads, e.g. by making the following simple change (added language in brackets and stricken language will be deleted):

> ORDERED, Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from entering Plaintiffs ~~land~~ [Parcel 2 and 3 as described on Plat 2499 recorded among the Plat records of Washington County, Maryland, except those portions of land subject to public roads and ways.] ~~as described in the Opinion and this Order.~~

Young, or anyone else, is free to petition the legislature for the redress they desire, and/or the issue of public roads can be fully litigated in *Holder v. Morral.*

Additionally, the trial court's opinion should be stricken in its entirety. The opinion creates more uncertainty than it cures by its references to the rail-bed, alter

ego doctrine, Parcel 1, "roads to nowhere," and access issues related to Uncle Eddies parcels that could not possible be "fully and fairly litigated," and/or "necessary to this judgement." These issues can be litigated in *Holder v Morral*.

CITATIONS AND TEXT OF PERTINENT STATUTE AND RULES

Chapter 64 of the Acts of 1866 §12

Sec. 12. *And be it enacted,* That whenever in the construction of said road or roads it shall be necessary to cross or intersect any established road or ways, either public or private, it shall be the duty of the said President and Directors of said company so to construct the said road across such established road or way, as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the lands of any individual it shall also be their duty to provide for such individuals proper wagon ways across said road or roads, from one part of his lands to the other, and whenever any road or roads may hereafter be authorized to be made by the Legislature, when it may be necessary to cross said railroad, the company shall make or cause to be made a proper and convenient way for said road to cross, the expenses of which shall be paid as the Legislature may direct.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3900 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112; Font Times New Roman size Thirteen (13) Point.

/s/ Robert Kline

Robert Kline, Esq.

CERTIFICATE OF FILING AND SEVICE

I HEREBY CERTIFY that on this 11th day of December, 2023, I caused the foregoing Reply Brief of Appellant to be served via the MDEC system on counsel for the parties of record, below. I further caused eight paper copies of the Reply Brief of Appellant to be filed with the Clerk of the Appellate Court of Maryland, and two paper copies to be mailed via first class US mail to the following counsel of record for the parties:

Justin Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, MD 21782
(240) 356 - 2008;

Victor Cretella, *Esq.*
111 W. Washington Street
Hagerstown, MD 21740
(240) 329 - 4616.

/s/ Robert Kline

Robert Kline, Esq.

STATEMENT OF REASONS FOR APPENDIX IN REPLY BRIEF

Pursuant to Md. Rule 8-501(f), Appellant now states its reasons for the inclusion of the following appendix. Appellee Young has raised a new issue in this appeal related to public roads which was not litigated in the trial court, and all evidence of those roads was precluded by the trial court. The following appendix materials are relevant to illustrate some of the evidence proffered with respect to the dedication, acceptance, precise location and/or the existence of government held, (or public) roads relevant to the matter.

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JEFFREY YOUNG

Plaintiff

v.

JUSTIN HOLDER, Et Al

Defendant(s)

CASE NO.: C-21-CV-20-000371

MOTION to DISMISS or in the ALTERNATIVE COLLATERAL ESTOPPEL of INTERESTED PARTIES

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Motion to Dismiss or in the Alternative Collateral Estoppel of Interested Parties, and for reasons states:

INTRODUCTION

The Plaintiff has filed this action with material knowledge of the interest of other parties that are not properly joined to this lawsuit. The Plaintiff has filed this lawsuit without consulting a title expert and obtaining a report. The Plaintiff does not have any Expert Surveyor's to Opine about the title and property lines. The Plaintiff has filed this lawsuit with knowledge that Defendant was actively pursuing redress under the 1st Amendment with the Public 'writ large. The Plaintiff has filed this action to harass and annoy Defendants for vexatious purposes, and the action can not and will not do substantial justice. There are other Parties that are necessary and proper in order to afford complete relief and resolve the entire controversy in a single proceeding.

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Pro se Litigator

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PLAINTIFF DID NOT ACT IN GOOD FAITH

1. ¶3 of Plaintiff Complaint states: "The real property in question is located in Washington County, Maryland, and is more particularly shown and described as Parcels 2 and 3 on the Plat entitled "Property Line Survey for Harry Wickline" dated June 15,1988, and recorded among the Plat Records for Washington County, Maryland, at Plat Record 2499."
2. Parcels 2 and 3 are narrow slivers of land as described by Expert Surveyors and further described and depicted in attached Exhibit(s) A through D. The slivers line up well with the Roads that appear in Ariel photos and maps. The Surveyors in Exhibits both agree the Title line is on the South side of Parcel 3 and the line held on the North side of Parcel 3 is a wire fence.
3. ¶15 of Plaintiff Complaint States "The last title owner of Parcel 3, shown on the aforesaid Plat, is unknown. Since June 21,1996, the Deeds of the adjacent property owners have described their eastern most boundary as Plaintiff's western most boundary as shown on the aforesaid Plat." Furthermore Plaintiff title deed recorded at Liber 885 folio 110 of the Washington County Land records describes Plaintiff's Western Boundary as the Eastern boundary of what is now Stonecrest Development in Keedysville, Maryland.
4. Plaintiff's Parcel 3, Plaintiff claims to have adversely possessed and Defendant's "Remaining Lands" described by deed recorded at Liber 6414 folio 219 and recorded in the Land Records of Washington County, Maryland; are both bounded on the North West line by Lots 10,11,12,13 and 14 of the Stonecrest Subdivision as described on Plat 8292 recorded among the Plat records of Washington County, Maryland.

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5. ¶20 of Plaintiff Complaint States: "There is no person or party, of record or in fact, having or claiming to have any hostile, right, or interest in or to said property. Plaintiff has made reasonable and good faith efforts to locate any such party by conducting a thorough examination of all pertinent land, and estate and tax records for Washington County, Maryland, and has as well interrogated the owners of adjoining properties in order to uncover such claims and none have been uncovered."
6. This Defendant has deposed the owners of lots 10 through 15 of the Stonecrest subdivision as described on Plat 8292, the Deponents did not recall discussing claims or interest with Plaintiff, and some Deponents do claim an interest in this action.
7. The Plaintiff was mistaken in his Pleading at ¶20 that was verified by Oath, and Plaintiff's candor must be questioned. Specifically see pending Motion to Compel of Deponent Christine Morral. Plaintiff Jeffrey Young and Christine Morral were petitioners in a consolidated Peace Order and Appeals thereof, which adjudicated rights that are now the subject of this instant litigation. The Plaintiff was present in the Courtroom for the entirety of the Peace Order Trial. Deponent Christine Morral testified to discussing the instant case with the Plaintiff and Plaintiff Counsel.

GROUNDS AND AUTHORITIES

MD. Real Property Code Ann. § 14-611 (2020) states:

"The court on its own motion or on motion of any party may issue any appropriate order to require: (2) The plaintiff to procure a title report supported by an affidavit by the person making the search that a complete search of the public records has been performed in accordance with generally accepted standards of title examination for the appropriate period as determined by the court, but not less than 60 years, and designate a place where the title report shall be kept for inspection, use, and copying by the parties."

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MD. Real Property Code Ann. § 14-611 (2020) states:

(a) If the court orders service by publication, the plaintiff shall:(1 Post, not later than 10 days after the date the order is issued, a copy of the summons and complaint in a conspicuous place on the property that is the subject of the action; and (2) File proof that the summons has been served, posted, and published as required in the order"

MD. Real Property Code Ann. § 14-618 (2020) states:

"A judgment in an action under this subtitle is binding and conclusive, regardless of any legal disability, on: (1) All persons known and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided;"

<u>The Court has allowed exception in certain circumstances:</u>

"**The presence of necessary parties "cannot be waived by the other parties to the proceedings,"** *Bender v. Secretary, Department of Personnel*, 290 Md. 345, 350, 430 A.2d 66 (1981), **"and the absence of necessary parties may be raised for the first time on appeal"**. *Kaliopulus v. Lumm*, 155 Md. 30, 141 A. 440 (1928). "Ordinarily, then, we would remand this case to permit joinder of The Granary, Inc. and Voyageur. *Bender, supra, Kelley v. Davis*, 233 Md. 494, 498, 197 A.2d 230 (1964). "There are, however, **special circumstances** presented in this record that persuade us not to follow that procedure.The primary purposes of the joinder requirement of § 3-405(a) are **"to assure that a person's rights are not adjudicated unless that person has had his `day in court'"** and to prevent "multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding." *Bender*, 290 Md. at 351, 430 A.2d 66. If these objectives are met — especially if the non-joined parties are bound by the decree — *see Williams v. Moore*,215 Md. 181, 185-86, 137 A.2d 193 (1957) — the formal non-joinder of necessary parties may not be fatal."see also More recently, in *Reddick v. State*, 213 Md. 18, 130 A.2d 762, *cert. denied*, 355 U.S. 832, 78 S.Ct. 50, 2 L.Ed.2d 44 (1957)

<u>Typical Requirements of Joinder:</u>

"To trigger its application, the litigants need only comply with its minimal prerequisites. For the protection of all concerned, appellees must satisfy Rule 2-211 or Rule 2-231 in order to proceed." [Emphasis Added] *Board of County Comm'rs of St. Mary's County v. Gardner*, 557 A. 2d 260 - Md: Court of Special Appeals 1989. This Court has held that the purpose of Maryland Rule 2-211 is to provide for "the compulsory joinder of necessary

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parties so that the case can proceed efficiently with respect to all persons having a cognizable interest in the matters" and allow the court to grant complete relief. *Caretti, Inc. v. Colonnade Ltd. P'ship,* 104 Md. App. 131, 142 (1995). Necessary parties must be made party to a proceeding. *Serv. Transp., Inc. v. Hurricane Express, Inc.,* 185 Md. App. 25, 35-36 (2009) (quoting *Bender v. Secretary, Md. Dep't of Pers.,* 290 Md. 345, 350 (1981)). One of the primary purposes of Maryland Rule 2-211 is to "`prevent multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding.'" *City of Bowie v. Mie Props., Inc.,* 398 Md. 657, 703 (2007) (quoting *Bodnar v. Brinsfield,* 60 Md. App. 524, 532 (1984)). "The `impair or impede' and `multiple liability' components of Maryland Rule 2-211(a)(2) focus on the concerns of the absent party and the liabilities of the defendants," not the concerns of the plaintiff. [Emphasis Added] *Hurricane Express, supra,* 185 Md. App. at 40.

ARGUMENT

7. In a typical Declaratory Judgement of a road and/or escaped parcel the Court has tended to require joinder, of all necessary parties to grant complete relief.

8. In this claim the Plaintiff and Court have made clear, both believe this claim includes "special circumstances" in which the adjoining owners need not be made parties, nor the Public 'writ large.

9. The Court has the authority to hear the case as the Court choses and the Plaintiff can take his chance on Appeal.

10. The Defendants should not be prejudiced, and the parties deposed in this case were shown the "Universal Notice" advertised in the Herald Mail by order of this Court under Rule 2 -122 virtually during deposition, and must be consider to have been constructively informed of the claim and collaterally estopped and bound to the final decree.

11. The Defendants in this action will be severely prejudiced if the Claim is not dismissed, and the Interested Parties are not collaterally estopped and bound by the final decree;

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when the Claim is decided in their favor and the Interested Parties again request relief from the Court or are aggrieved.

12. The Defendant has requested 1st Amendment redress of the Public Local Law 7-404 to survey and set out fences in the road which is part of this instant dispute. This request for redress has not been formally denied, just ignored by the Public 'writ large.

13. The Plaintiff has filed the Complaint in "bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern;" MD. Courts and Judicial Proceedings Code Ann. § 5-807 and the Claim should be stayed or dismissed until the Public 'writ large can address the Defendant's request for redress.

CONCLUSION

WHEREFORE, the Plaintiff apparently failed to post the "Universal Notice" as required by MD. Real Property Code Ann. § 14-616 (2020), however the Defendant virtually showed the notice to all adjoining property owners, the requirements under the law have been "constructively" met; and

WHEREFORE, the Plaintiff shall be required to prepare a title report in accordance with MD. Real Property Code Ann. § 14-611 (2020), which shall identify any unknown persons that have not seen the "Universal Notice" and join as parties to the suit same; and

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WHEREFORE, by the aforesaid "constructive" virtual posting of "Universal Notice" in accordance with MD. Real Property Code Ann. § 14-616 (2020), Title Search and identification of any additional unknown parties under MD. Real Property Code Ann. § 14-611 (2020), the Final Order of the Honorable Court at the conclusion of this proceeding will be binding on all parties in accordance with MD. Real Property Code Ann. § 14-618 (2020); and

WHEREFORE, the Defendant has requested redress under the 1st Amendment from the Town of Keedysville, Washington County and the State of Maryland; and in accordance with MD. Courts and Judicial Proceedings Code Ann. § 5-807 (d) "A defendant in an alleged SLAPP suit may move to: (1) Dismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable; or (2) Stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December, 2021, a copy of the foregoing Motion to Dismiss or in the Alternative Collaterally Estoppel Interested Parties was served via the MDEC system to :

Roland David Pembroke, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

INTERESTED PARTIES:

Peter Rogers, Esq., and Attorney for Scott and Christine Morral
Talley Kovacs, Esq., Attorney for the Department of Natural Resources;

Justin K. Holder, *Pro Se*

Justin K. Holder

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IN THE DISTRICT COURT FOR WASHINGTON COUNTY, MARYLAND

CHRISTINE MORRAL AND
SCOTT MORRAL,

Plaintiff,

vs. Case No.: D-112-CV-20-000061

JUSTIN HOLDER,

Defendant.

JUSTIN HOLDER,

Plaintiff,

vs.

CHRISTINE MORRAL AND
SCOTT MORRAL,

Defendant.
_____/

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(TRIAL)

July 31, 2020

BEFORE:

HONORABLE MARK D. THOMAS, JUDGE

APPEARANCES:

For the Morral Plaintiffs:

ROLAND D. PEMBROKE, ESQ.

For the Defendant, Mr. Holder:

ADAM GREIVELL, ESQ.

Proceedings Transcribed by: Sheila Orms

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MR. GREIVELL: Call George Nagel, Your Honor.

Whereupon,

GEORGE NAGEL,

a witness produced on call by the Defendant, first having been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREIVELL:

Q State your name and work address please.

A George Nagel, 981 Mount Aetna Road, Hagerstown, Maryland 21740.

Q And where do you work today?

A Fox & Associates.

Q And where's that located?

A At 981 Mount Aetna Road, Hagerstown, Maryland.

Q Got it. Hagerstown in Frederick roughly?

A Yes, Hagerstown, Maryland 21740.

Q Thank you.

A Uh-huh.

Q And what do you do?

A I'm a professional land surveyor.

Q And how long have you been a professional land surveyor?

A I've been licensed as a professional land surveyor in the State of Maryland --

THE COURT: Hold on. Can you proffer what he's going to testify to?

MR. GREIVELL: Surveyed the location of the right of way and whether it burdens the Stonecrest parcel, whether it crosses the area.

THE COURT: Right, so -- and the bottom line is he can say it's where?

MR. GREIVELL: Right where he was standing.

THE COURT: Okay. Is that sufficient, based on the survey, it's not based on --

MR. PEMBROKE: Well, Your Honor, first of all, for the record I'd like to make the same objection as --

THE COURT: But as to relevance.

MR. PEMBROKE: Yes, sir.

THE COURT: Right, understood.

MR. PEMBROKE: Other than that, I have no questions.

THE COURT: All right. I mean, you understand what I'm trying to --

MR. GREIVELL: Expedite things, sure, and I think to some extent, Your Honor, Mr. Nagel is also a fact witness because he's been on the ground and has observed --

THE COURT: All right.

MR. GREIVELL: So if we're going to -- I mean, if we're going to stipulate that the surveyor opines that Mr.

Holder was in an area that is also described as the wagon road --

THE COURT: Right.

MR. GREIVELL: -- then we don't need to go there for expert opinion, I'll just ask him a question as a fact witness.

MR. PEMBROKE: I'm not stipulating to that.

THE COURT: All right. Go ahead.

MR. GREIVELL: Thank you, Your Honor. Are we stipulating that he's an expert surveyor, do I have to qualify him?

THE COURT: All right. Thank you.

MR. GREIVELL: Thank you.

BY MR. GREIVELL:

Q Did there come a time --

MR. PEMBROKE: Well, Your Honor, I'm not stipulating. I still -- I have no questions to ask him. I mean, I'm not objecting I guess to the proffer that that's what his opinion would be, but I'm not stipulating to it.

THE COURT: Well, having heard the proffer I want to hear his testimony because the same question I asked Ms. Clabaugh would be, one that I would ask him which is what's a wagon road. So go ahead. You can proceed.

MR. GREIVELL: I'm just going to do what I was going to do.

THE COURT: Huh?

MR. GREIVELL: I'm just going to do what I was going to do?

THE COURT: Yes.

MR. GREIVELL: Thank you, Your Honor.

THE COURT: But we will -- I'm going to find that he's qualified, with his credentials I'm going to assume he's qualified.

MR. GREIVELL: Thank you, Your Honor.

BY MR. GREIVELL:

Q Did there come a time you were hired by Mr. Holder to conduct a survey work in the area of 25 and 28 Antietam, Stonecrest development in the D&R Riverton Roxbury rail and trail properties?

A Yes.

Q And approximately how long ago were you hired?

A I believe the initial hire, date of hire was in March. It started out as a boundary on his property on the other side, but then it developed into -- he was -- further retained us to look into this easement issue and the location of it.

Q Okay.

A And that was I believe around the beginning of June when we first started looking into that.

Q And have you been out on the property in this area

that claims to be a wagon road?

A Yes, I have.

Q Okay. And you've done that for the purpose of conducting your professional assessment in order to conduct a survey?

A Correct. We were looking for physical evidence that agrees with the written record.

Q Okay. And -- well, why don't you describe for the Court what you did in order to ascertain the location of the wagon road claimed in the deed change that you heard testified about today in relation to reality on the ground.

A Well, first we put it in with the boundary work that we had, done for Mr. Holder already because the description does reference certain physical monuments and other -- well, I guess they're physical monument. So we did that and we went out in the field and we actually discovered or uncovered a stone that was called for at the end of the first line, which when --

Q The end of the first line of what?

A The first line of that description for the easement.

Q Okay.

A It calls out.

THE COURT: You uncovered it?

THE WITNESS: We recovered it. It was actually

projecting out of the ground, we found it, but it's called for and we verified that with other stones --

BY MR. GREIVELL:

Q When you say recovered you just mean you --

A We located it, we found it, we located it, tied it in so that we could view it and compare it relative to other monumentation that we found for his property and the adjacent property, the original Stonecrest back when it was cross boundary.

Q Okay.

A So -- and those agree very well.

Q Okay.

THE COURT: So these are the actual property lines you're talking about?

THE WITNESS: That is correct.

THE COURT: Okay.

Q Did you prepare a drawing that demonstrates the location of the wagon road right of way and also demonstrates the monumentations found?

A Yes, we did.

Q Okay. Do you have that with you today?

A I do.

MR. GREIVELL: I'll mark this as Defendant's Exhibit 4, I'll show Mr. Pembroke a copy. That's the only copy you have?

(Whereupon, Defendant's Exhibit No. 4 was marked for identification)

THE WITNESS: With me, yes.

(Pause)

THE COURT: Are you moving it?

MR. GREIVELL: Not yet. I think I want to have you looking at it, Your Honor, while we're talking about it. I think I have another copy here.

(Pause)

MR. GREIVELL: Okay. This was marked as Defendant's Exhibit 4. I think it's marked as Defendant's Exhibit 4 here, but this was marked as a temporary, it's the one I'm handing Mr. Pembroke now.

(Pause)

MR. GREIVELL: Do you want to compare it to the one that -- the Court has --

THE COURT: Yeah.

BY MR. GREIVELL:

Q And, Mr. Nagel, I'm showing you what's marked as Defendant's Exhibit 4 which is an 8 and a half by 11 sheet of paper which is marked as an exhibit as a temporary because we heard this matter previously, does this appear to be the same document that I just handed to the Judge that you just handed to me?

A It does.

Q Thank you. So referencing this document --
A Uh-huh.
Q -- can you describe -- describe the work you did.
A Well, this is just a sketch showing the culmination I guess of all the field work that we did out there. And the easement is the approximate location of the access easement is shown as --
THE COURT: The gray shaded area?
THE WITNESS: Yes, correct.
THE COURT: Okay.
BY MR. GREIVELL:
Q And why did you say approximate location?
A Well, because when you get down to one end it's questionable as to whose property that actually is or at least it was. I do believe that that was supposed to be part of Stonecrest, but it appears it goes across Jeffrey Young's property --
Q You're talking about the area --
A This piece.
Q -- behind Lots --
A They're not -- lots 10 through 14.
Q 10, 11, 12, 13, 14?
A Yes.
Q But --
A But the area --

Q -- the area along the railroad, again our property are you confident -- are you more confident that that's the location of the wagon road at that area?

A Yes, I think that one's pretty clear.

Q And why are you confident that that's the location?

A Well, the description for it calls out the -- running along the western side of the -- at that point it was the Washington County Railroad and it also calls out again at the end of the first line for a stone, which we did recover --

Q And is that marked on the map?

A It is. It's right near the rear corner of Lots 8 and 9.

Q Where it says "stone found"?

A Stone found, yes, correct.

Q And then over there following that line to the corner where it says "mag nail found."

A Mag nail found. That was the nail that was referred to previously as being in the rock pile.

Q Where is it in relation to the rock pile?

A It's in the middle of the rock pile on top, and it's drilled in.

THE COURT: A mag nail?

THE WITNESS: Yeah, it's a magnetic nail. It

gives off a magnetic detection so it helps us when we look for them.

THE COURT: Not from the 19th Century?

THE WITNESS: No, that was much more recently. Those weren't even in existence prior to the late '90s.

THE COURT: Right. So that means that's where someone thought that the boundary was then?

THE WITNESS: That is correct, yes.

BY MR. GREIVELL:

Q And the line that you have drawn as the boundary of the Western Maryland Railroad, how did you ascertain where that line is?

A That was based upon monuments that we found on both sides of the railroad right of way --

Q Okay. And --

A -- that were set by other surveyors.

Q And do you agree that the back side of Stonecrest runs along the railroad boundary line?

A It does. It's the -- part of the property is owned by the town of Keedysville, it's the open space area where the storm water management pond is as well as Lot 9.

Q Okay. And does the wagon road as described in the deed and as you have drawn encroach upon or encumber Lot 9 of Stonecrest?

A Yes, it does, according to the description.

Q Okay.

MR. GREIVELL: I move for the admission of Defendant's Exhibit 4.

MR. PEMBROKE: Objection.

THE COURT: Subject to the objection, the objection is overruled, your continuing objection for previous reasons, it'll be admitted.

(Whereupon, Defendant's Exhibit No. 4 was received into evidence)

MR. GREIVELL: Thank you, Your Honor. May I have a moment please?

(Pause)

BY MR. GREIVELL:

Q Okay. And did you observe while you were in that area how close the fence of Lot 9 is to the property line of the railroad, at least at that first corner.

A At the one end, it appeared to be on the property line or close to it, very close to it.

Q And then it ran more or less parallel or?

A I didn't really take close notice when we were out there, because I wasn't concerned with that at the time.

Q Okay.

A But I do believe, you know, it ran at a slight angle because of the stone pile, I do recall, it did not go up over the stones.

Q Okay. And you were there in -- how many times have you been out to that area, the wagon road area since you were hired?

A I think a total of four times.

Q Okay. And did you observe any evidence, any physical evidence of a way or path or road?

A No, not particularly but the vegetation was not as developed as the surrounding woods. We did do some research. We pulled up old photographs from the United States Geological Surveys from the '60s and I think there was one from the '70s which did indicate, did show a well used path or a well used road on that area.

Q And are these documents that would ordinarily be relied upon by a surveyor conducting work like this?

A Usually, yes, if we're looking for something like that, that's a resource that we usually draw from.

Q And did you bring a copy of the picture from 1974?

A I did not.

Q Well, I think I did and you can tell me whether this is one you retrieved.

MR. GREIVELL: I'm showing Mr. Pembroke Defendant's Exhibit No. 5, it's a two page stapled document, two photographs.

(Whereupon, Defendant's Exhibit No. 5 was marked for identification)

BY MR. GREIVELL:

Q I'm showing you what I've marked as Defendant's Exhibit 5, it's two pages. The first is a full on picture and the second is, I'll represent to you is zoomed in and has been cropped of the same image. Do you recognize at least the first page of this document?

A Yes, I do.

Q And what is it?

A That is one of the photographs that we obtained from the United States Geological Survey.

Q Okay. And through your training, knowledge and experience, do you recognize this picture to be an accurate depiction of the ground it shows?

A Absolutely.

Q And the second page, this is a digital file that you recovered, correct?

A That is correct.

Q And the second page is that a zoomed in section of the overall file?

A That is, yes.

Q Okay. And can you describe what you see in this picture?

A Well, it's an undeveloped portion of the Stonecrest development, which is surrounded by -- well, surrounded on the southern side by two roads. One of them I

believe is what is referred to in that easement description as the old wagon road, which someone apparently had been using at least at that time because you can -- it's obvious to pick out in the photograph.

Q And this is on the top left side of the picture is Main Street in Keedysville?

A Main Street. Yes, that's Main Street in Keedysville, that's correct.

Q And at the bottom coming at a more or less 90 degree angle off of Main Street --

A That is Dog Street.

Q -- is Dog Street.

A Yes.

Q And towards the top coming at a more or less 90 degree angle off of Main Street is what people call Antietam Drive?

A Antietam Drive, yes, that is correct.

Q Okay. And does this picture seem to show a wagon road consistent with what you drew in your Exhibit 4?

MR. PEMBROKE: Objection.

THE COURT: Overruled.

THE WITNESS: It does appear to be close to the same area, yes.

BY MR. GREIVELL:

Q And in your training, knowledge and experience,

would that -- with the existence of the visual depiction of a path such as this in this picture, indicates that it had been used at or around that time in the picture taken in 1974.

A Yes, I do believe so.

MR. PEMBROKE: Objection.

THE COURT: Sustained.

MR. GREIVELL: I'll move Defendant's Exhibit 5 into evidence.

MR. PEMBROKE: Objection.

THE COURT: Subject to his continuing objection it will be admitted.

(Whereupon, Defendant's Exhibit No. 5 was received into evidence)

MR. GREIVELL: No further questions, Your Honor.

THE COURT: Any questions, Mr. Pembroke?

CROSS-EXAMINATION

BY MR. PEMBROKE:

Q You indicated that -- you said that the location of at least part of this wagon road is questionable.

A Not the location of the road, but the property itself. The description calls for a portion of the road, a description calls for the boundary line between the Kost and Keedy property. There is evidence that there might have been a mistake made in a previous survey back in the '80s

where they shifted the line to go to a line more with the fence, which by that photograph appears to be on the north side of the road, when actually the property line should've been on the south side of the road.

And then there was a deed prepared based on that, which they specifically stated that they did not warranty the conveyance of that parcel. They conveyed four parcels in the deed and two of them they specifically stated they did not warranty.

So it appears that they weren't real comfortable with whethre they actually owned it or not. And in any event, when Stonecrest was done instead of holding what I believe should've been the southern line, which is what's shown on the south side of that gray hatched area for the road, it should have been the property for Stonecrest, but they actually held the fence line to the north instead.

Now, I did acquire the surveyor who did the boundary survey for Stonecrest and he was also one of the developers I have his records, and has all the location of that same fence line. That fence line has pretty much since time because people have moved in and removed it doesn't exist as it did at that time.

Q Now, what year was that photograph taken?

A That photograph was 1974.

Q So that's about 46 years ago?

A That would be correct.
Q Okay. Is it fair to say that you have no other more recent photographs of that area?
A They probably exist, but I did not --
Q But you haven't seen them?
A -- pull those, no. We were looking to see what -- if for that specific time between the '60s and '70s because that was the time of the last deed.
Q All right. Is it fair --
A We wanted to see what was there.
Q Is it fair to say then that say for at least say the last 40 years based on the information that you've seen, you cannot say whether or not this wagon road has been used or not or how much or by whom?
A Yes, I wouldn't have any idea without pulling further evidence.
MR. PEMBROKE: Thank you, no further questions.
MR. GREIVELL: Nothing else, Your Honor.
THE COURT: It's Nagel?
THE WITNESS: Yes.
THE COURT: Is that your name, Nagel?
THE WITNESS: Nagel, yes.
THE COURT: Nagel. Thank you, sir, nice to meet you.
MR. GREIVELL: Thank you, Mr. Nagel.

IN THE APPELLATE COURT OF MARYLAND

JUSTIN HOLDER *Appellant* v. JEFFREY YOUNG, *Appellee*	IN THE APPELLATE COURT OF MARYLAND September Term, 2023 No. 0883

AFFIDAVIT OF GEORGE E. NAGEL

1. My name is George E. Nagel, I am over 18 years of age, and I am competent to testify about the acts set forth herein.

2. I am a licensed Professional Land Surveyor in the State of Maryland, and my Maryland Registration No. is 21052, expiration date: August 24, 2024.

3. In my professional capacity I have reviewed and surveyed the portions of Plat No.s 2499, 5429, and 8292 as they are recorded among the Land Records of Washington County, Maryland, that are relevant to the acts I set forth in this affidavit.

4. In my professional capacity I have reviewed a document that purports to be a "Proposed Comprehensive Plan Town of Keedysville," whereas an "attested copy of the Plan" was "forwarded" by "Kenneth S. Ellis, Chairman, Keedysville Planning Commission" "[i]n order to comply with Section 3.07 of Article 66B, the Maryland Planning and Zoning Act," and "[r]eceived on Mar 7 1975 by Vaughn J. Baker, Clerk of Circuit Court," (herein referred to as the "1974 Comp Plan"), and determined the 1974 Comp Plan is relevant to the acts I set forth in this affidavit.

5. I found the Town of Keedysville's declaration on page 43 of the 1974 Comp Plan, whereupon the Town of Keedysville informs me in its "PLAN FOR CIRCULATION" that "[t]he background studies have outlined the existing conditions of Keedysville's limited network of roads" "[t]o clearly understand the relationship of streets and highways to overall regional and local patterns of development, it is necessary to classify them according to their function," and "[o]nce these functions are determined, logical improvements, controls and design features may be established for existing and future streets in Keedysville, whereas "[g]eneral types of street functions are defined as follows:...Locals provide direct access to abutting properties and channel local traffic to collector streets," useful in my opinion to determine the reported ownership and classification of the roadways on the land I surveyed that is depicted on Plat No.s 2499 and 8292 as they are recorded among the Land Records of Washington County, Maryland.

6. When I reviewed the 1974 Comp Plan, I found "Map 1" located after page 4, "Map 2" located after page 17, "Map 3" located after page 22, and "Map 4" located after page 48, (the "1974 Comp Plan Maps") relevant to the survey work I performed related to Plat 2499 and 8292 as they are recorded among the Land Records of Washington County, Maryland.

7. "Map 1" located after page 4 in the 1974 Comprehensive Plan indicates its "SOURCE: ADAPTED FROM USGS TOPOGRAPHIC MAPS, WASHINGTON COUNTY SOIL SURVEY MAPS AND FIELD INVESTIGATION."

8. "Map 2" located after page 17 in the 1974 Comprehensive Plan indicates its "SOURCE: WASHINGTON COUNTY PLANNING AND ZONING

COMMISSION, EXISTING LAND USE MAPS; Ca. 1968: UPDATED FROM 1970 U.S.D.A. AERIAL PHOTOS AND FIELD CHECK, 1973."

9. In the field of land surveying I have relied on a substantial amount of USGS AERIAL PHOTOS, USGS TOPOGRAPHIC MAPS and U.S.D.A. AERIAL PHOTOS, along with field measurements and factual data collection to determine the historical location of roadways on the land I survey, and my training and experience has been that those documents are accurate and useful in determining the historical location of roadways over the land that I have surveyed.

10. I have reviewed USGS AERIAL PHOTOS, USGS TOPOGRAPHIC MAPS and U.S.D.A. AERIAL PHOTOS that depict the land described on Plat No.s 2499, 5429, and 8292 as recorded among the Land Records of Washington County, Maryland, that are relevant to the acts I set forth in this affidavit.

11. In my professional training and experience in the field of land survey, after completing field work, locating monumentation and factual evidence useful to a professional land surveyor in locating roadways on the ground, and reviewing USGS AERIAL PHOTOS, USGS TOPOGRAPHIC MAPS and U.S.D.A. AERIAL PHOTOS it is my professional opinion that the local connector road depicted on the 1974 Comp Plan Maps burdens the area of land described as Parcel 2 as it is described on Plat No. 2499 as an "AREA OF DEED OVERLAP."

12. In my professional training and experience in the field of land survey, after completing field work and locating monumentation and factual evidence useful to a professional land surveyor in locating roadways on the ground, it is my

professional opinion that the local connector road depicted on the 1974 Comp Plan Maps burdens land depicted on Plat No. 2499 and Plat 8292 at or near the location on Plat No. 2499 depicted as running more or less parallel to the text notation "FENCELINE DOES NOT FOLLOW DEED LINE."

13. I have reviewed the Town of Keedysville, Maryland Mayor and Council minutes dated 4-10-61, wherein the Town of Keedysville memorialized a meeting of the "Mayor and Council" for "the express purpose of naming the Streets of Keedysville," and "[t]he following names were suggested and approved:... Harris Lane - running southeast from Main Street parallel to the railroad tracks," and after conducting field measurements, research of historical maps and aerial photographs it is my professional opinion, within a reasonable degree of certainty in the profession of land surveying, that "Harris Lane" follows the same path as I described as "Approximate location of Access Easement" in a survey I have attached to this affidavit labeled "Approximate location of Access Easement (Liber WMcKK 6, Folio 363" and the area described as "Vegetation and ground clearing in this area" on a document I have attached to this affidavit labeled "Maryland DNR demonstrative Merlin Map."

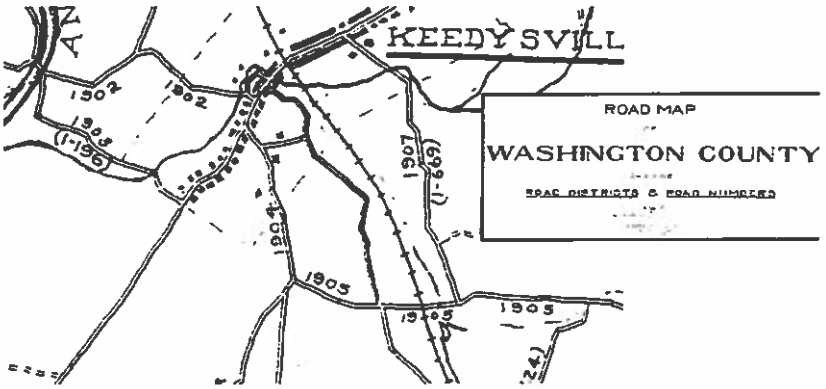
14. In my professional capacity I have reviewed and surveyed portions of the "Road Map of Washington County Showing Road Districts & Road Numbers" which indicates it was drawn by E. R. Darby, J. B. Ferguson & Co. Engineers, Hagerstown, Maryland and that it was Revised in 1937, (the "1936 Road Map"), that hangs in the land records room in the Washington County Circuit Court.

15. I have read and reviewed a nonfictional historic book written by Ted Ellis titled "BRADDOCK'S NEGLECTED ROUTE (THE LOST FORK OF THE CONOCOCHEAGUE ROAD ON MARYLAND's WESTERN FRONTIER)," (which I refer too herein as "Ellis's book").

16. During the period of March 19, 2020 through March 24, 2021, I had occasion to be physically present on and survey a portion of the land that is burdened by the road being designated as "1906," (or an extension thereof) on the "1936 Road Map," and road "1906" (or an extension thereof) accurately follows the path that is demonstratively marked as "Rd to Hess mill" on page 69 of Ellis's book.

17. I have read and reviewed Justin Holder's Appellant Brief filed in Appeal No. 883, September term 2023 at pp. 3-4 under the heading "STATEMENT OF THE CASE" §C "The evidence in the record of the history of the 'Road to Keedysville,' and its use by General Braddock and George Washington in 1755," (herein referred to as "Mr. Holder's Br. §C").

18. I can identify the illustration on p. 4 of Mr. Holder's Br. §C as the relevant portion of the 1936 Road Map that I surveyed, and on March 24, 2021 I walked a majority portion of the road that is demonstratively marked with red trace in the illustration depicted on p. 4 of Mr. Holder's Br. §C, and I observed factual evidence that I would use as a surveyor to determine that the location of the road designated as 1906, (or extension thereof) on the 1936 Road Map burdens land described on Plat No. 2499, and that illustration is inserted into my Affidavit on the following page.



19. Prior to testifying in Case C-21-CV-20-371 I spoke with Justin Holder and it was my understanding after that conversation the trial court prohibited any evidence of public roads, and I did not testify at trial related to evidence of public roads.

I, George E. Nagel, hereby declare or affirm under the penalties of perjury and personal knowledge that the facts 1 through 19 above, and matters set forth in the forgoing **"AFFIDAVIT OF GEORGE E. NAGEL"** are true and correct.

12/01/2023

George E. Nagel

APP034

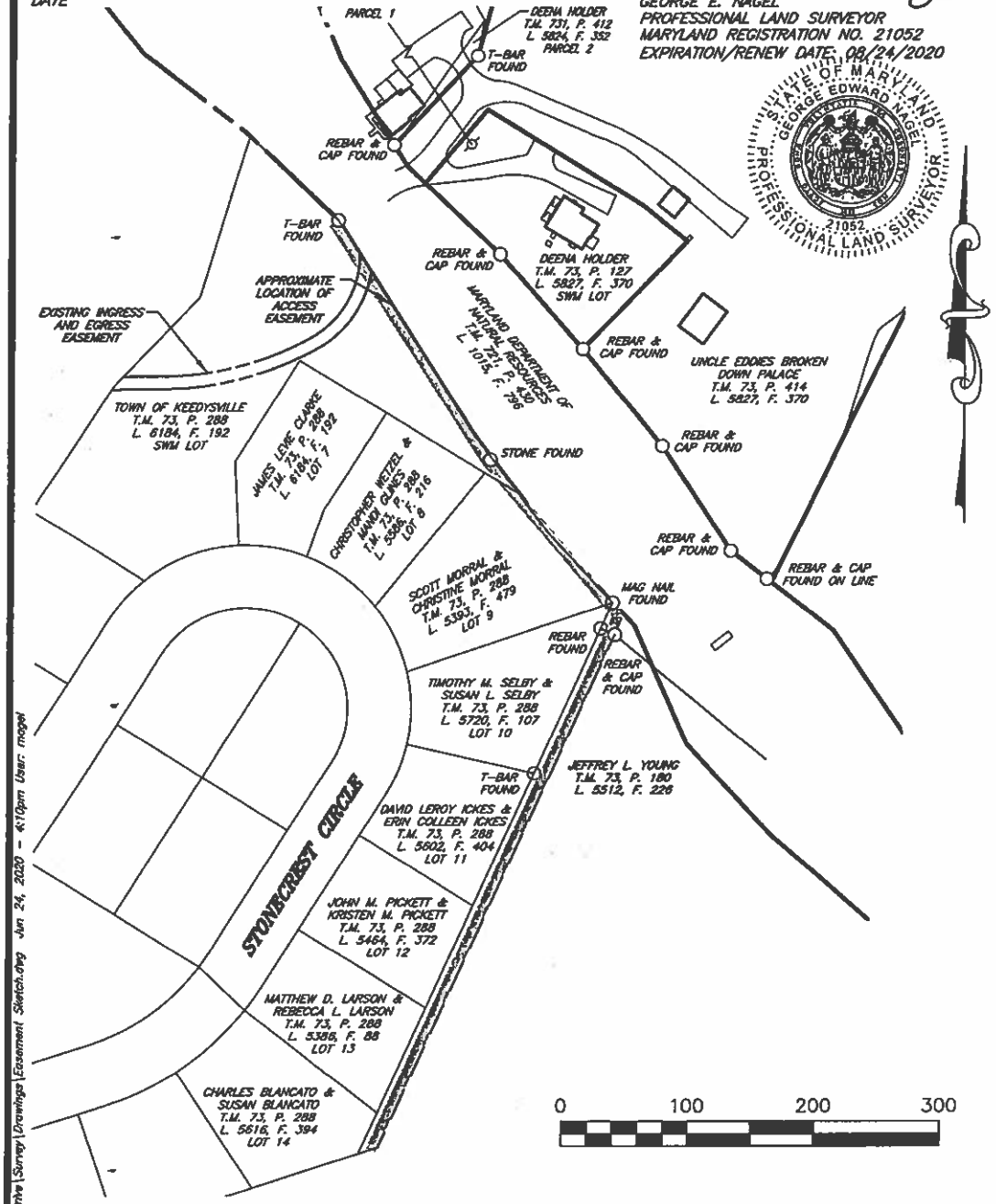
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF THAT THIS PLAN IS CORRECT AND FURTHER THAT THIS PLAN WAS PERSONALLY PREPARED BY ME, OR THAT I WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEYING WORK REFLECTED HEREON, ALL IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN COMAR 09.13.06.12 IN EFFECT AT THE TIME THIS SURVEY WAS PERFORMED.

06/24/2020
DATE

GEORGE E. NAGEL
PROFESSIONAL LAND SURVEYOR
MARYLAND REGISTRATION NO. 21052
EXPIRATION/RENEW DATE: 08/24/2020

STATE OF MARYLAND · GEORGE EDWARD NAGEL · PROFESSIONAL LAND SURVEYOR · 21052


PARCEL 1
DEENA HOLDER T.M. 731, P. 412 L 5824, F. 352 PARCEL 2
T-BAR FOUND
REBAR & CAP FOUND
T-BAR FOUND
REBAR & CAP FOUND
DEENA HOLDER T.M. 73, P. 127 L. 5827, F. 370 SWM LOT
APPROXIMATE LOCATION OF ACCESS EASEMENT
EXISTING INGRESS AND EGRESS EASEMENT
MARYLAND DEPARTMENT OF NATURAL RESOURCES T.M. 721, P. 490 L 1015, F. 796
REBAR & CAP FOUND
UNCLE EDDIES BROKEN DOWN PALACE T.M. 73, P. 414 L 5827, F. 370
TOWN OF KEEDYSVILLE T.M. 73, P. 288 L. 6184, F. 192 SWM LOT
JAMES LEVIE CLARKE 288 192 T.M. 73, P. L. F. L 6184, F. LOT
CHRISTOPHER METZEL & MANDI GUNCS 288 P. F. 216 T.M. 73, L. 5388, LOT 8
STONE FOUND
REBAR & CAP FOUND
REBAR & CAP FOUND
REBAR & CAP FOUND ON LINE
SCOTT MORRAL & CHRISTINE MORRAL T.M. 73, P. 288 F. 479 L. 5393, LOT 9
MAG NAIL FOUND
REBAR FOUND
REBAR & CAP FOUND
TIMOTHY M. SELBY & SUSAN L SELBY T.M. 73, P. 288 L 5720, F. 107 LOT 10
JEFFREY L. YOUNG T.M. 73, P. 180 L. 5512, F. 226
T-BAR FOUND
DAVID LEROY ICKES & ERIN COLLEEN ICKES T.M. 73, P. 288 L. 5802, F. 404 LOT 11
STONECREST CIRCLE
JOHN M. PICKETT & KRISTEN M. PICKETT T.M. 73, P. 288 L. 5464, F. 372 LOT 12
MATTHEW D. LARSON & REBECCA L. LARSON T.M. 73, P. 288 L. 5386, F. 88 LOT 13
CHARLES BLANCATO & SUSAN BLANCATO T.M. 73, P. 288 L. 5616, F. 394 LOT 14
0
100
200
300

H:\20\43352 Antietam Drive\Survey\Drawings\Easement Sketch.dwg Jun 24, 2020 - 4:10pm User: mogel

APPROXIMATE LOCATION OF ACCESS EASEMENT

(LIBER WMcKK 6, FOLIO 363)

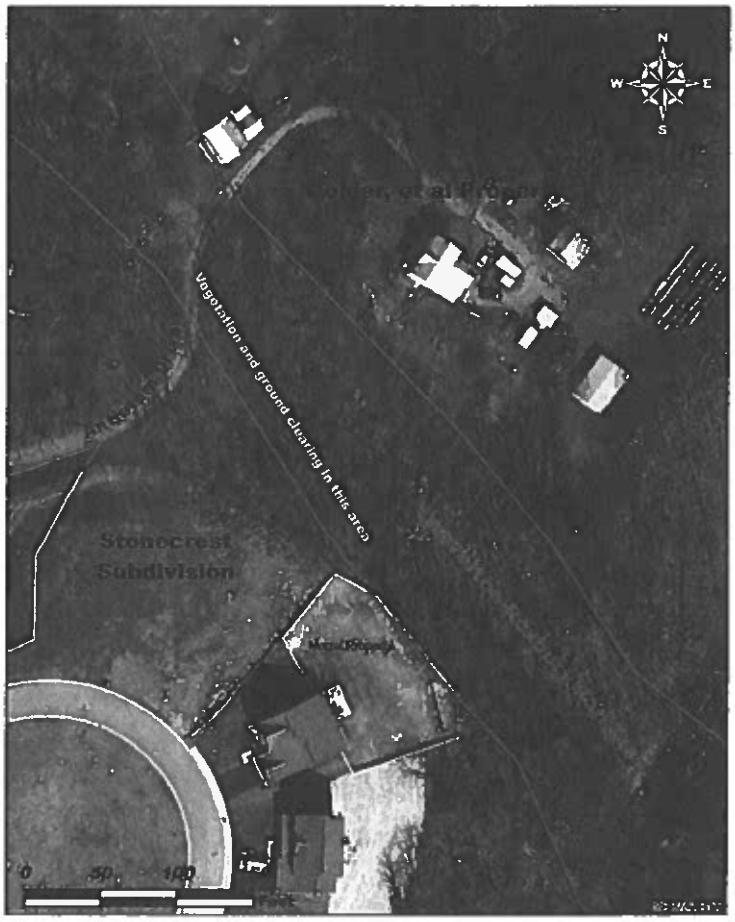
SITUATE NORTH AND EAST OF STONECREST CIRCLE
KEEDYSVILLE, WASHINGTON COUNTY, MARYLAND

DRAWN BY: R.E.N.	DATE: 6-22-2020
CHECKED BY: G.E.N.	DATE: 6-24-2020
SCALE: 1" = 100'	

FOX & ASSOCIATES, INC.
ENGINEERS • SURVEYORS • PLANNERS
981 MT. AETNA ROAD, HAGERSTOWN, MD. 21740
PHONE: (301)733-8503
email:foxassoc@foxassociatesinc.com

DISTRICT 19
TAX MAP No. 73
DWG. No. A-23146

12/1/2023



MARYLAND DNR DEMONSTRATIVE MERLIN MAP

12/1/2023

IN THE APPELLATE COURT OF MARYLAND

JUSTIN HOLDER *Appellant* v. JEFFREY YOUNG, *Appellee*	IN THE APPELLATE COURT OF MARYLAND September Term, 2023 No. 0883

AFFIDAVIT OF JUSTIN HOLDER

1. My name is Justin K. Holder, I am over 18 years of age, and I am competent to testify about the acts set forth herein.

2. I made a discovery request, by and through counsel Adam D. Greivell, Esq., in case C-21-CV-20-371 for entry upon land claimed by Plaintiff Jeffrey Young, and myself, which was scheduled to occur on or about March 15, 2021.

3. After discussions with counsel for Jeffrey Young, a date of March 24, 2021 was set for inspection of the property, and any private/public roadbeds located thereon.

4. On (or about) March 24, 2021 professional land surveyor George Nagel, Richard Nagel, Adam Greivell, Esq., Matthew Ruble, Esq., and I were present on the property Young claims, in accordance with a right of entry to survey the land, (said persons herein referred to as the "survey party.")

5. The survey party walked the land Young claims, and followed the roadbed that Young was using as his driveway southeasterly, and onto property commonly known as the "Rockingham subdivision."